

5. The effective date of this rule amendment is May 1, 1985.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 95—[AMENDED]

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

Section 95.627 (a) and (c) is revised to read, as follows:

§ 95.627 Emission types.

(a) A GMRS transmitter may employ only the following type emissions:

A1D, H1D, R1D, J1D, G1D, F1D (See § 95.181 (g) and (h) of this chapter which limits selective calling tones and tone-operated squelch to establishing or continuing voice communications.) A3E, H3E, R3E, J3E, G3E, F3E

* * *

(c) A CB transmitter may employ only the following type emissions:

A1D, H1D, R1D, J1D (See § 95.412 (b) and (c) of this chapter which limits selective calling tones and tone-operated squelch to establishing or continuing voice communications.) A3E, H3E, R3E, J3E

(d) * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Goetzea elegans* (Beautiful Goetzea) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Goetzea elegans* (beautiful goetzea, matabuey, manzanilla) to be an endangered species. This plant is only found in the semi-evergreen seasonal forests that occur on limestone in northern Puerto Rico. Fewer than 50 plants are known to exist, some on land managed by the Government of the Commonwealth of Puerto Rico and the others on privately owned land. The continued existence of this species is endangered by possible road straightening and widening, periodic trimming of roadside vegetation, potential limestone mining, cattle management practices, and a

proposed amusement park complex. This final rule will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Goetzea elegans*.

DATE: The effective date of this rule is May 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Banco de Ponce Building, Dr. Basora and Méndez Vigo Streets, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709, and at the Service's Regional Office, Richard B. Russell Federal Building, Room 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Pace at the above Mayagüez address (809/833-5760) or Mr. Richard P. Ingram at the above Atlanta Regional Office address (404/221-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

The genus *Goetzea*, usually referred to the family Solanaceae (which includes nightshade, white potato, and tomato), also has been segregated with four other small genera into a distinct family of its own, the Goetzeaceae (Willis, 1973). The only other representative of the genus, *G. ekmanii* from the island of Hispaniola, is thought to be no longer extant in the Dominican Republic (Vivaldi *et al.*, 1981).

Goetzea elegans was first collected in Puerto Rico in 1827 by Heinrich Wydler; it was found growing along a hedge composed mostly of a large bromeliad species. Wydler (1830) did not give the exact locality when he described the species and named the genus to honor the German theologian J.E. Goetze, but the type locality is believed to have been Quebradillas. Quebradillas was noted as the source of specimens collected by Bello in 1881, along a hedge composed, in part, of *Bromelia pinguin*. Three other historic populations are now considered extirpated. These included one in the northern foothills of the Luquillo Mountains, recovered by Eggers in 1883 and by Holdridge and Gerhart in 1936; one south of Canóvanas, recorded by Vélez and Marrero between 1939 and 1950; and one in the Cambalache State Forest, recorded by Woodbury in 1975 (Vivaldi *et al.*, 1981). Two of the three known sites now occupied by *Goetzea elegans* are separated by about ¼ mile (0.4 km), and occur along the edge of a semi-evergreen seasonal forest on limestone at elevations below 656 feet (200 m) in the Guajataca Gorge area in the Municipality of Isabela (Vivaldi *et al.*, 1981). A third, recently discovered

site is located 3.5 miles (5.6 km) east of the other two in a ravine in the Municipality of Quebradillas. This site contains about 30 plants, including the only plant known to have produced flowers and fruit since 1936 (J.L. Vivaldi, pers. comm.)

Goetzea elegans is an evergreen shrub or small tree up to 30 feet (9 m) tall and with stems up to 5 inches (13 cm) thick. The leaves are simple, alternate, and range up to 4 inches (10 cm) long and up to 2 inches (5 cm) wide; the upper surface is dark shiny green, and the lower surface is pale green. *Goetzea elegans* has been observed with flowers and fruits in the months of May to August. Usually a single orange flower is borne on a curved stalk in the leaf axil, and there may be several terminal flowers. The flowers are symmetrical and funnel-shaped. The fruit is one-seeded, orange, subglobose, and about ¾ inches (2 cm) in diameter.

Goetzea elegans was recommended for Federal listing by the Smithsonian Institution (Ayensu and Defillips, 1978). In August 1979, the Service contracted with Dr. José L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of some plants thought to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey indicated that *Goetzea elegans* should be proposed for listing as an endangered species. On December 15, 1980, the Service published a notice in the *Federal Register* (45 FR 82479) naming those plant taxa being considered for listing as endangered or threatened species; *Goetzea elegans* was included.

In a notice published in the *Federal Register* on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Goetzea elegans* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, *Federal Register* (49 FR 2485). An additional petition finding required in accordance with section 4(b)(3)(B)(ii) of the Act was incorporated in the proposed rule for this species. The Service proposed to list *Goetzea elegans* as an endangered species in the June 18, 1984, *Federal Register* (49 FR 24903).

Summary of Comments and Recommendations

In the June 18, 1984, proposed rule (49 FR 24903) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Commonwealth of Puerto Rico agencies, municipal governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The San Juan Star* on July 8, 1984. Two comments were received and are discussed below. No public hearing was requested, and therefore none was held.

Mr. Clifford Pelton of the Federal Highway Administration on July 12, 1984, requested more specific information about the location of the plants to help the agency determine if any future activities might occur in the species' present habitat. The Service responded on July 17, 1984, by providing details of the species' current range.

Dr. José Vivaldi, Director of the Terrestrial Ecology Section of the Puerto Rico Department of Natural Resources in a letter dated August 6, 1984, questioned the Service's decision not to designate critical habitat as "ill-advised." The Service still considers that it is not prudent to designate critical habitat, because publication of the exact location of the plants could lead to taking or vandalism. Dr. Vivaldi also provided updated information on the numbers and locations of additional plants discovered since his status survey of 1981, upon which the proposed rule was based. This final rule has incorporated this new information.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Goetzea elegans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424, October 1, 1984, 49 FR 38900) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Goetzea elegans* Wydler, beautiful goetzea or matahuey, are as follows:

A. The present or threatened destruction, modification, or curtailment

of its habitat or range. Two of the three existing sites occupied by *Goetzea elegans* are located in the Guajataca Gorge area, Municipality of Isabela. One site managed by the Commonwealth Department of Transportation and Public Works and one privately owned site are periodically cleaned and cleared of vegetation near the roadside. This results in serious habitat disturbance, which has adversely affected *Goetzea elegans* and its associated plant communities (see also factor "E" below). The roadside site now supports only one or two adult plants and about three root suckers. The privately owned site now contains only 6 plants, although in 1955 it contained over 30 adult plants. The third site in Quebradillas is a privately owned remnant of undisturbed forest surrounded by lands cleared for pasture. Any additional clear cutting to expand grazing areas could eliminate these plants.

A possible threat to these sites is road construction. In recent years, many roads have been resurfaced or widened in Puerto Rico. Some of the roads in the Guajataca area are now being repaired, straightened, or widened, including Highway Number 2. Any future projects, unless done with consideration and care, could either destroy or substantially modify habitat upon which individuals of *Goetzea elegans* depend.

A newly proposed project that may threaten the species is a recreational complex to be located nearby. The complex reportedly would include the largest amusement park in the Caribbean, with an associated resort. This project and the secondary development that would accompany it could destroy or adversely modify the species' habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Taking has not been a documented factor in the decline of this species, but could easily become so in the future. The species occurs along a road near habitations and has potential as an ornamental plant. Professional cultivation from cuttings and tissue culture is being attempted.

C. Disease or predation. Grazing could become a threat in the future at two of the privately owned sites, since adjacent lands are already being used as cattle pasture.

D. The inadequacy of existing regulatory mechanisms. The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists. Sand extraction is regulated by Law 144, June 3, 1976, "Extracción de materiales de la corteza

terrestre." However, whether this prohibition affects taking of such vulnerable species has not been tested in Commonwealth courts' interpretation; there is no established precedent.

E. Other natural or manmade factors affecting its continued existence. Periodic trimming of *Goetzea elegans* along the roadside during routine vegetation management for road maintenance is the most serious immediate threat to the species. Sometimes the plants are cut back to the ground. This practice has resulted in stunted growth and is probably responsible for the lack of observed flowers and fruits in recent years, as well as the lack of seedlings.

Goetzea elegans is found in three small, compact, isolated groups probably composing one population. The total number of individual plants known is less than 50. At one of the two Guajataca Gorge sites, 30 plants were counted in 1955; they have now been reduced to only 6 plants. Loss of genetic variation in the species is therefore probable. It has a very narrow ecological niche and is restricted to ravines and ledges in semi-evergreen seasonal forests on limestone. These factors make *Goetzea elegans* even more vulnerable to the threats described above.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Goetzea elegans* as an endangered species. With so few individuals known and the risk of damage to the plants and/or their habitat so high, endangered rather than threatened status seems an accurate assessment of the species' condition. It is not prudent to propose critical habitat because doing so would increase the risk for the species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *Goetzea elegans* is not prudent for this species at this time.

As discussed under threat factor "B" above, *Goetzea elegans* is potentially threatened by collecting, an activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction; such lands

are not involved in this proposal. Publication of critical habitat localities would increase the risk of taking or vandalism, particularly at the roadside sites. The extreme vulnerability of *Goetzea elegans* to any collecting would make it quite detrimental to the survival of the species. Thus, determination of critical habitat for *Goetzea elegans* would not be prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. The only potential Federal involvement known at this time is that of the Federal Highway Administration. In the event that highways are widened or resurfaced in this area, a strong commitment will be needed to protect *Goetzea elegans*. Without the protection provided by the Act, the species could be brought to extinction or its habitat substantially modified. Road designers and work crews would need to be alerted so that the plants are taken into consideration in any plans for the reconstruction of nearby roads. Such work should be done with utmost care and would require that the habitat of *Goetzea elegans* be left undamaged. It is not known whether there will be any

Federal involvement in the amusement park complex proposed. Any Federal authorization, funding, or participation in this project would be subject to the provisions of section 7 discussed above.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Goetzea elegans*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International trade and interstate commercial trade in *Goetzea elegans* are not known to exist, and the plant is very rare in experimental cultivation. It is anticipated that few trade permits involving plants of wild origin will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas from Federal jurisdiction. The new prohibition now applies to *Goetzea elegans*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulation are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Goetzea elegans* is not known to occur on any Federal lands at this time, so requests for taking permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of

1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

- Ayensu, E.S., and R.H. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.
- Vivaldi, J.L., R.O. Woodbury, and H. Diez-Soltero. 1981. *Goetzea elegans* Wydler. Updated species report submitted to the Fish and Wildlife Service. 48 pp.
- Willis, J.C. 1973. A Dictionary of the Flowering Plants and Ferns, 8th Edition. Revised by H.K. Airy Shaw. Cambridge University Press, Cambridge, England. xxii + 1311 pp.
- Woodbury, R.O. 1975. The Rare and Endangered Plants of Puerto Rico. U.S.D.A. Soil Conservation Service and Puerto Rico Department of Natural Resources. San Juan, Puerto Rico. 85 pp.
- Wydler, H. 1830. Plantarum quarundam descriptiones. Linnaea 5:423-425, pl. VIII.

Author

The primary author of this final rule is Mr. Robert T. Pace, U.S. Fish and Wildlife Service, Mayagüez Field Station, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709-3005 (809/833-5760). Status information and a preliminary listing package were provided by Dr. José L. Vivaldi, 1904 Cond. Parque de Las Fuentes, Hato Rey, Puerto Rico 00918. Dr. George Drewry of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Solanaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Solanaceae—Nightshade family:						
<i>Goetzea elegans</i>	Beautiful goetzea, matabuey....	U.S.A. (PR)	E	175	NA	NA

Dated: March 24, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and
Parks.

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